

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CSX TRANSPORTATION, INC.,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY
COMPANY, et al.,

Defendants.

CIVIL ACTION NO.
2:18cv530

EXCERPT TRANSCRIPT OF PROCEEDINGS
(**Daubert Hearing - Rulings**)

Norfolk, Virginia

December 2, 2022

BEFORE: THE HONORABLE ROBERT J. KRASK
United States Magistrate Judge

1 judgment.

2 Norfolk Southern argues that CSX should not be
3 allowed to relitigate the final judgment of the STB in 2008
4 proving the discontinuance of the Diamond Track. The Court
5 agrees that CSX does not have standing to contest that
6 decision and the Court does not have jurisdiction to overturn
7 it.

8 CSX asserts it will offer evidence of the Diamond
9 Track closure as one means by which Norfolk Southern sought
10 to block CSX's access to on-dock rail at NIT for
11 anticompetitive gain.

12 As addressed in the ruling on Norfolk Southern's
13 motion to dismiss, this Court has jurisdiction over the
14 antitrust and related state law claims pending before the
15 Court.

16 To the extent CSX can prove at trial that the
17 closure of the Diamond Track was undertaken to block CSX's
18 access to on-dock rail at NIT, the evidence, to the extent
19 that it's not time-barred, appears to be relevant to claims
20 at issue under Rule 401 of the Rules of Evidence.

21 Norfolk Southern's argument that this evidence will
22 confuse and mislead the jury is not persuasive. The facts
23 surrounding the discontinuance of the track including the
24 Surface Transportation Board's approval of the closure and
25 CSX's failure to object at that time can be presented to the

1 jury.

2 Accordingly, the probative value of the evidence is
3 not substantially outweighed by dangers of confusing or
4 misleading the jury, and the evidence should not be excluded
5 pursuant to Rule 403.

6 Norfolk Southern further argues that any evidence
7 surrounding the Belt Line's meetings and Surface
8 Transportation Board proceedings addressing the Diamond Track
9 fall far outside the relevant time period, making the
10 evidence irrelevant and inadmissible as it relates to the
11 statute-of-limitations question.

12 That is a matter that the parties and the Court can
13 revisit as needed following the Court's ruling on the motions
14 for summary judgment.

15 Next I will address ECF number 353, which is the
16 Belt Line's motion in limine to exclude evidence and argument
17 about CSX's private switching rates.

18 The Belt Line's motion in limine to exclude evidence
19 or argument about other contractual switching rates paid by
20 CSX is denied.

21 Belt Line seeks to exclude that evidence and
22 argument on the grounds that it's not relevant and, even if
23 it were, it's unduly prejudicial pursuant to Rules 401, 402,
24 and 403 of the Rules of Evidence. And, respectfully, I do
25 disagree on both points.